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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-second session

SUMMARY RECORD OF THE 562nd MEETING

Held at Headquarters, New York,
on Monday, 22 March 1993, at 10 a.m.

Temporary Chairman: Mr. FLEISCHHAUER
(Under-Secretary-General,
The Legal Counsel)

Chairman: Mr. MIKULKA (Czech Republic)

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Agenda item 3: Question of early review and possible revision of the principles relevant to the use of nuclear power sources in outer space

The meeting was called to order at 10.45 a.m.

OPENING OF THE SESSION

Tribute to the memory of Mr. Manfred Lachs, first Chairman of the Subcommittee

1. At the suggestion of the Temporary Chairman, the members of the Subcommittee observed a minute of silence.

Opening statement

2. The TEMPORARY CHAIRMAN, speaking as the representative of the Secretary-General, noted that over the past 30 years the Legal Subcommittee had made an impressive contribution to the establishment of a solid international legal basis for the orderly exploration and use of outer space. The Subcommittee had directly participated in the drafting of the 1963 Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, and in the finalizing of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, the cornerstone of modern international space law. It had also played an important role in the formulation of the four agreements on the rescue and return of astronauts, liability for damage caused by space objects, the registration of space objects and activities on the Moon, which, together with the Outer Space Treaty, perhaps constituted the most important component of international space law. Further, the Subcommittee had formulated a series of declarations and legal principles that represented an important addition to the body of legislation on outer space.

3. Of particular significance was the fact that the year before the General Assembly had adopted, without a vote, the Principles Relevant to the Use of Nuclear Power Sources in Outer Space. Consensus had been achieved following arduous negotiations in which the Subcommittee, with the assistance of the Scientific and Technical Subcommittee in the spirit of goodwill and compromise that had always characterized its work, had succeeded in resolving the numerous delicate legal problems that had arisen.

4. The rapid development of space science and technology was opening up new horizons in the exploration and use of outer space for peaceful purposes and there was a need for the establishment of a legal framework so that such activities could be conducted in an orderly manner without disputes in order to foster economic progress, harmony and prosperity, rather than mistrust, tensions and conflicts. The Legal Subcommittee would doubtless continue with its tradition of successfully dealing with the important tasks entrusted it by the international community. The Office of Legal Affairs, which provided secretariat services to the Subcommittee, was ready to offer it all necessary assistance so that the session might conclude positively.

CHAIRMANSHIP OF THE SUBCOMMITTEE

5. The TEMPORARY CHAIRMAN said that the Group of Eastern European Countries, which had traditionally provided the Chairman of the Legal Subcommittee, had expressed a wish for the re-election as Chairman of Mr. Václav Mikulka, who had

(The Temporary Chairman)

held the post for the previous three years as representative of the former Czechoslovakia, and who would now do so as representative of the Czech Republic, which had been admitted to the United Nations as a new Member on 19 January 1993 and designated that same day by the General Assembly to occupy the seat on the Committee of the former Czechoslovakia. If there was no objection, he would take it that the Subcommittee wished to re-elect Mr. Mikulka as Chairman.

It was so decided.

Mr. Mikulka (Czech Republic) took the Chair.

PARTICIPATION BY NON-MEMBER STATES

6. The CHAIRMAN said that Cuba, the Slovak Republic and Turkey had applied to participate in the work of the Subcommittee, and recalled that it was within the authority of the Committee on the Peaceful Uses of Outer Space to grant observer status. He suggested that the Subcommittee should not adopt a formal decision in that regard but, if there was no objection, that the representatives of those three countries should attend the formal meetings of the Subcommittee and, in the event that they wished to make a statement, should seek permission from the Chair.

It was so decided.

ADOPTION OF THE AGENDA (A/AC.105/C.2/L.191)

7. The CHAIRMAN drew the Subcommittee's attention to paragraphs 4 (a), (b) and (c) of General Assembly resolution 47/67 of 14 December 1992, entitled "International cooperation in the peaceful uses of outer space", which contained recommendations by the General Assembly relating to the current session, and said that, if there was no objection, he would take it that the Subcommittee wished to adopt the provisional agenda (A/AC.105/C.2/L.191) prepared by the Secretariat on the basis of paragraph 4 of General Assembly resolution 47/67.

It was so decided.

ORGANIZATION OF WORK

8. The CHAIRMAN said that, in accordance with the General Assembly's recommendations, open-ended working groups of the Subcommittee should be established on item 3 (Nuclear power sources), item 4 (Definition of outer space and the utilization of the geostationary orbit) and item 5 (Benefits of outer space). Accordingly, he suggested that the three working groups on the substantive agenda items should be re-established.

It was so decided.

9. The CHAIRMAN said that Mr. Franz Cede, of Austria, who had chaired the Working Group on nuclear power sources at the previous session, was not

(The Chairman)

available for the current year. He suggested that Mr. Helmut Freudenschuss, also of Austria, should be appointed Chairman of the Working Group.

It was so decided.

10. The CHAIRMAN said that, if there was no objection, he would take it that the Subcommittee wished to re-elect Mr. Estanislao Zawels, of Argentina, Chairman of the Working Group on the definition and delimitation of outer space and the utilization of the geostationary orbit.

It was so decided.

11. The CHAIRMAN said that, if there was no objection, he would take it that the Subcommittee wished to re-elect Mr. Raymundo González, of Chile, as Chairman of the Working Group on the benefits of outer space.

UTILIZATION OF CONFERENCE SERVICES AND ADOPTION OF THE SCHEDULE OF MEETINGS

12. The CHAIRMAN said that over the past three years the Subcommittee had achieved an appropriate level of efficiency in the use of conference-servicing resources owing to the adoption of various measures by consensus, as contained in paragraph 12 of the report of the Subcommittee (A/AC.105/514). The Subcommittee had agreed that an organization of work similar to that adopted at its thirty-first session should serve as a basis on which to organize the work of its thirty-second session (A/AC.105/514, para. 14), and that agreement had been endorsed by the Committee on the Peaceful Uses of Outer Space (A/47/20, para. 153). The Subcommittee had further agreed on the adoption at its 1993 session of two additional measures, namely that one morning plenary meeting per week should be replaced by a meeting of an appropriate working group and that morning meetings should begin at 10 a.m.

13. The year before the Committee had recalled its recommendation that the Legal Subcommittee should, as a permanent arrangement, establish an annual rotation in the order in which the substantive agenda items should be considered. As the Subcommittee had employed that rotation over the previous three years, the order in which the substantive items would be taken up at the current session would be that contained in General Assembly resolution 47/67 and in the Subcommittee's agenda. The General Assembly had endorsed the Committee's recommendations relating to the organization of work of the Legal Subcommittee (General Assembly resolution 47/67, para. 6).

14. Accordingly he suggested that at the current session organizational measures similar to those adopted or proposed at earlier sessions should be employed. Having outlined such measures, as contained in document A/AC.105/514 (paras. 12 (a) to (g) and paras. 15 (a) and (b)), he further proposed that, for the purposes of advance programming of informal consultations, six formal afternoon meetings should be left unprogrammed and that, instead, an equal number of informal consultations should be programmed. If there was no

(The Chairman)

objection, he would take it that the Subcommittee wished to accept those proposals and adopt the schedule of meetings contained in document A/AC.105/C.2/L.191.

It was so decided.

GENERAL EXCHANGE OF VIEWS

15. Mr. HE Qizhi (China) said that the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, which had been adopted as a result of the efforts undertaken over a long period by the Subcommittee, contained substantive clauses of great importance to the future development and improvement of the legal regime in that area. In view of the rapid development of science and technology, his delegation agreed that the item should be kept on the agenda.

16. For all its advantages, the use of nuclear power sources in outer space was a hazardous activity, and it was therefore important to lay down strict principles in order to safeguard the earth environment and the security of mankind. The use of nuclear power sources should be restricted to those space missions which could not be operated by non-nuclear energy sources and should not be directed towards militarization or the build-up of weapons in space. The technical criteria specified in the principles were based on those established by the International Commission on Radiological Protection (ICRP), with a number of exceptions, such as low-probability accidents which might have radiological consequences. That was a compromise solution which could be accepted by all parties under the current circumstances. In general, the instrument needed further improvement in order to ensure the safe use of nuclear power sources in outer space. His delegation would play an active part in the further consideration of the issue.

17. The working paper entitled "Questions concerning the legal regime for aerospace objects" (A/AC.105/C.2/L.189), submitted by the Russian Federation, addressed a question in some ways similar to the legal regime applicable to air and space activities, which had been dealt with during the consideration of the definition and delimitation of outer space. The paper was important, however, because it offered a new perspective on the question.

18. The "working non-paper" on geostationary satellite orbit submitted by the Group of 77 was helpful for the discussion of the relevant issues. Since the geostationary orbit was a limited natural resource, it was necessary to discuss the principles that should be applied in order to improve current practice. In considering the question, particular account should be taken of the interests of developing countries, without prejudice to the provisions of the ITU Convention.

19. The question of the benefits of outer space was of great importance because it involved the issues of dissemination and exchange of space knowledge and technology, preservation of the outer space environment, and activities conducted for the benefit of mankind. His delegation would play an active part in the consideration of the issue.

(Mr. He Qizhi, China)

20. Finally, his delegation attached great importance to the elaboration of international space law within the United Nations system. Outer space activities could not be separated from the strengthening of the legal order in outer space. The drastic changes that had occurred in the international situation were conducive to reducing the military elements in the use of space and strengthen international cooperation in the peaceful uses of outer space. The Subcommittee should seize the opportunity to promote the development of international space law, an endeavour in which China had always taken part and in which it would continue to play an active role.

21. Mr. ALBIN (Mexico) said that the adoption of the set of principles on the use of nuclear energy sources in outer space showed that, given the political will, it was possible to move ahead in the progressive development of international space law. His delegation had always supported the establishment of an effective universal legal order to regulate space activities and had therefore joined the consensus which had enabled the principles to be adopted. Although they applied only to nuclear power sources devoted to generation of electric power on board space objects, they represented a first step towards the establishment of a compulsory legal framework.

22. His delegation welcomed the debate in the Scientific and Technical Subcommittee on the need to extend the scope of the principles and improve the provisions governing safety conditions, and felt that the documents submitted by the Russian Federation, Pakistan and the United Kingdom offered a useful point of departure for revising the principles. In that connection he underscored the need for transparency in space activities and the importance of including a provision on the need for prior notification of the presence of a nuclear power source on board a space object.

23. With regard to the benefits of the exploration and utilization of outer space, his delegation had repeatedly stressed that the Subcommittee's work should focus on the establishment of a legal framework guaranteeing all States, particularly developing countries, access to knowledge concerning space science and technology and its applications. A first step in that direction was the drawing up of guidelines for the promotion of international cooperation in outer space. The Group of 77, of which his country was a member, had submitted a proposal to that effect in 1991, which had been accepted as a basis for discussions on the matter. He trusted that the constructive dialogue so far achieved would be maintained and hoped that agreement could be reached on granting the working group a negotiating mandate on the subject.

24. His delegation supported the proposal by the Russian Federation (A/AC.105/C.2/L.189) that, in connection with the question of the definition and delimitation of outer space, the Subcommittee should consider questions concerning the legal regime for aerospace objects. That would help to break the deadlock created by the impossibility of reaching agreement on the need to establish a boundary between air and outer space. He called on those delegations which had formulated objections to the proposal by the Russian delegation to reconsider their position.

(Mr. Albin, Mexico)

25. With regard to the character and utilization of the geostationary orbit, he considered that the document submitted in 1991 by the delegation of Colombia offered a sound basis for continuing discussions, with the aim of establishing a special legal regime to ensure the rational use of the geostationary orbit and equitable access for all States. It was also important for the Committee on the Peaceful Uses of Outer Space to begin consideration of the question of space debris as soon as possible.

26. In conclusion, his delegation reaffirmed its support for the promotion of effective measures to keep outer space free from military conflict and prevent its militarization, so as to ensure that all space activities were undertaken for the benefit and interest of mankind. With that in view, it reiterated its support for the establishment of a working relationship between the Committee on the Peaceful Uses of Outer Space and the Ad Hoc Committee on Prevention of the Arms Race in Outer Space of the Conference on Disarmament.

27. Mr. GRANOW (Germany) said that, in recent years, the Subcommittee had succeeded in paving the way for a consensus on the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, a process which had culminated in the adoption of those principles by the General Assembly on 14 December 1992, giving further proof of the efficiency of the Subcommittee's work.

28. The discussion on questions relating to the definition and delimitation of outer space and the character and utilization of the geostationary orbit had once again highlighted the satisfactory work done by the International Telecommunication Union to ensure equitable access to the geostationary orbit for all countries. In that connection, his delegation stressed that the development of space technology should not be impeded by any premature delimitation of air and space not based on solid criteria.

29. With regard to the benefits of the exploration and utilization of outer space, his delegation had always believed that international cooperation was vital in the field of space activities, as evidenced by its participation in numerous projects. It was therefore of the opinion that the task ahead was not to make the initiation of cooperation obligatory, but to further develop rules aimed at securing mutually fruitful and beneficial cooperation.

30. Mr. BOYER (France) said that if the progress made in recent years on agenda items 3 and 5 continued and intensified, the Subcommittee would have reason to feel very satisfied. In 1992, largely as the result of the Subcommittee's work, consensus had been achieved on the Principles Relevant to the Use of Nuclear Energy Sources in Outer Space. The debates on the other two items had also taken an encouraging turn.

31. The dialogue between France and Mexico was ongoing, productive and friendly and had become more extensive in recent years. However, there was one point on which his delegation did not agree with the Mexican delegation, namely the establishment of a working relationship between the Disarmament Commission and the Committee on the Peaceful Uses of Outer Space. His delegation believed that each body should perform its own tasks. The Disarmament Commission was composed

(Mr. Boyer, France)

of diplomats who were at least as competent as those on the Committee on the Peaceful Uses of Outer Space, and the two bodies' respective areas of competence should be respected.

AGENDA ITEM 3: QUESTION OF EARLY REVIEW AND POSSIBLE REVISION OF THE PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE

32. The CHAIRMAN recalled that, in its resolution 47/68, the General Assembly had adopted the Principles Relevant to the Use of Nuclear Power Sources in Outer Space and that in paragraph 4 (a) of its resolution 47/67, it had decided that, at its current session, the Subcommittee should consider, through its working group, the question of early review and possible revision of those principles.

33. The question of the use of nuclear power sources in outer space had also been considered by the Scientific and Technical Subcommittee at its session in New York in February 1993. The Subcommittee's report was contained in chapter IV of document A/AC.105/143, while the report of its working group could be found in annex III to that document.

The meeting rose at 11.55 a.m.

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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-second session

SUMMARY RECORD OF THE 563rd MEETING

Held at Headquarters, New York,
on Wednesday, 24 March 1993, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

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Participation of non-member States

General exchange of views (continued)

Question of early review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space (continued)

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The meeting was called to order at 10.30 a.m.

PARTICIPATION OF NON-MEMBER STATES

1. The CHAIRMAN said that the Libyan Arab Jamahiriya, the Republic of Korea and Portugal had requested to participate in the work of the Subcommittee and recalled that it was the prerogative of the Committee on the Peaceful Uses of Outer Space to grant observer status. He suggested that the Subcommittee should not adopt a formal decision in that regard but that, if he heard no objections, the representatives of the three countries should be authorized to attend the formal meetings of the Subcommittee and, if they wished to make a statement, address their requests to the Chairman.

It was so decided.

GENERAL EXCHANGE OF VIEWS (continued)

2. Mr. TELLES RIBEIRO (Brazil) welcomed the adoption by consensus of General Assembly resolution 47/68, entitled "Principles Relevant to the Use of Nuclear Power Sources in Outer Space", and said that the international community would certainly benefit from that resolution. With regard to the question of early review and possible revision of the Principles, referred to in paragraph 4 (a) of Assembly resolution 47/67, Brazil had noted with interest the working paper submitted by the United Kingdom at the thirtieth session of the Scientific and Technical Subcommittee (A/AC.105/C.1/L.187), in particular the idea of incorporating the question of space debris in the conceptual framework of the Principles; that question should be included in the agenda of the Scientific and Technical Subcommittee. Consideration should also be given to the observation made by the delegation of Canada at the same session that the revision of the Principles should be conducted with a view to increasing the level of safety that they provided.

3. With regard to the consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries, his delegation hoped that the fruitful exchange of views on document A/AC.105/C.2/L.187, submitted at the thirty-second session of the Subcommittee, would continue.

4. Mr. ORDZHONIKIDZE (Russian Federation) said that the expansion of outer space exploration activities, in which a growing number of countries was taking part, had increased States' interest in the progressive development of space law as the basis for international cooperation for the peaceful uses of outer space. Many States and groups of States had their own, objectively determined interests, and a constructive spirit should be adopted when considering solutions to those questions.

5. The Russian Federation welcomed the General Assembly's adoption of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space and it would respect them in its practical activities, since it was aware of the responsibilities of States that had experience in the use of such sources of energy. His delegation considered that the Principles could be revised, in particular in order to keep abreast of scientific developments. However, the

(Mr. Ordzhonikidze, Russian Federation)

revision of the Principles could begin only after thorough preparatory work had been conducted, inter alia, within the Scientific and Technical Subcommittee.

6. The distinction between the legal regimes applicable to outer space and airspace made it necessary to delimit those regimes and give them an appropriate legal form. In the light of the continuing exploration of outer space and the use of aerospace objects, that problem was becoming increasingly relevant. His delegation had repeatedly supported the proposal that the lower limit of extraterrestrial space should correspond to the minimum perigees of artificial satellites; however, so far it had not been possible to reach agreement in that regard. In his opinion, the Subcommittee should, for the time being, put aside consideration of that question and concentrate on the legal aspects of the use of aerospace objects within certain altitude limits. The questions raised in working paper A/AC.105/C.2/L.189, submitted by the Russian Federation, could be considered in detail. Once again, he called upon all members of the Subcommittee and the best legal experts from all countries to work together to find answers to those questions. The competent agencies and organizations of the Russian Federation were continuing to study the question of the legal regime applicable to the use of aerospace systems.

7. The fact that the Subcommittee was concentrating on the consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States was indisputable proof that outer space exploration was becoming a world-wide phenomenon. The Russian Federation hoped that all interested States, in particular the developing countries, would be given the greatest possible opportunity to participate in space activities on mutually advantageous terms.

8. Mr. GRANOW (Germany) said that his delegation associated itself with other delegations that had expressed their satisfaction at the adoption of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space. However, it was important to bear in mind that the Principles dealt with an area of high technology in which scientific progress was constantly taking place. That was why the Principles provided for a review process, which would enable States to adapt the Principles to their new technologies without altering the safety norms that had been agreed after years of negotiation.

9. Mr. HODGKINS (United States of America) said that his delegation was reviewing its position regarding the use of nuclear power sources in outer space, and it would refrain from proposing revisions to the Principles at the current session. With respect to the overall work of the Subcommittee, he expressed concern that some delegations believed that the Committee and its Subcommittees should consider questions related to the militarization of outer space, since that would be detrimental to efforts to promote international cooperation for the peaceful use of outer space. Disarmament issues fell within the competence of the Conference on Disarmament and other competent international bodies.

(Mr. Hodgkins, United States of America)

10. The Subcommittee should further improve its use of conference services. His delegation welcomed the measures that had already been adopted at the suggestion of the Chairman, and it was prepared to meet in informal consultations to propose other specific ideas on the subject and to hear the views of other delegations.

QUESTION OF EARLY REVIEW AND POSSIBLE REVISION OF THE PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE (continued)

11. Mr. ORRICO (Mexico) said that the adoption of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space was an important step towards the achievement of a mandatory regime that would guarantee the peaceful use of outer space, despite the fact that, in order to ensure their adoption, their scope had been limited to the generation of electric power. The inclusion of the item on the question of early review and possible revision of the Principles in the agenda of the Subcommittee reflected a desire to ensure that the Principles did not lose their validity as a result of rapid technological progress. The Principles would be reopened for revision no later than two years after their adoption, and the current session provided an opportunity for a preliminary discussion of elements that could further improve the Principles.

12. His delegation wished to place on record that it considered it necessary to improve Principle 4, which dealt with safety assessment, by specifying time-frames for submitting to the Secretary-General, prior to each launch, the results of the safety assessment. In that regard, he pointed out the contradiction contained in paragraph 3 of Principle 4, which provided that "the results of this safety assessment ... shall be made publicly available prior to each launch" and that "the Secretary-General of the United Nations shall be informed on how States may obtain such results ... as soon as possible prior to each launch".

13. The Principles did not establish modalities or procedures for resolving a third State's possible disagreement with the safety assessment carried out by the launching State. Such impreciseness, in particular in Principle 4, should be eliminated with a view to providing more specific parameters for determining responsibilities in case of an accident.

14. Mr. YOUNG (United Kingdom) said that the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, whose adoption by consensus had been welcomed by his delegation, provided that the principles would be reopened for revision by the Committee on the Peaceful Uses of Outer Space no later than two years after their adoption (Principle 11). It was clear from the manner in which consensus had been reached and the discussion of the Principles at the thirtieth session of the Scientific and Technical Subcommittee, which had begun with the consideration of a working paper submitted by his delegation (A/AC.105/C.1/L.187), that any perceived need to begin to revise the Principles would emanate from scientific and technical considerations and not legal ones. For that reason, his delegation doubted whether any detailed legal debate on the revision of the principles could be held at the current session. It would be better to wait until the Scientific and Technical Subcommittee had clearly identified the technical issues associated with the Principles and transmitted them to the Legal Subcommittee for any drafting that might be necessary.

15. Mr. HE Qizhi (China) requested the Bureau or the Secretariat to distribute to the members of the Subcommittee, for reference, copies of the working paper submitted to the Scientific and Technical Subcommittee by the United Kingdom (A/AC.105/C.1/L.187) and the working paper submitted by the Russian Federation (A/AC.105/C.2/L.189).

The meeting rose at 11.05 a.m.

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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-second session

SUMMARY RECORD OF THE 564th MEETING

Held at Headquarters, New York,
on Thursday, 25 March 1993, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

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General exchange of views (continued)

Question of early review and possible revision of principles relevant to the use of nuclear power sources in outer space (continued)

Organization of work

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The meeting was called to order at 10.20 a.m.

GENERAL EXCHANGE OF VIEWS (continued)

1. Mr. HAMBALI (Indonesia) said that international cooperation in the area of science and technology in outer space was absolutely necessary to ensure availability of information and knowledge as well as greater advantage from outer space activities for the developing countries. The Legal Subcommittee had an indispensable role to play in clarifying and strengthening the legal aspects of the use of outer space for the benefit of mankind.

2. Indonesia did not reject the use of nuclear power sources on board space objects since it was a consequence of the development and application of space technology for peaceful purposes. His country, however, had long expressed concern over possible hazards which the use of those sources entailed for human life and for the environment. For that reason it was heartening that, after extensive negotiations, the General Assembly had approved by consensus at its forty-seventh session the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.

3. In view of the ever-widening gap between developed and developing countries in space applications and technology, it was necessary to establish legal regulations to strengthen international cooperation and facilitate access of third world countries to the benefits of space activities. Consequently, a review of working paper A/AC.105/C.2/L.182 was both timely and relevant. Indonesia noted with satisfaction the substantive progress made at the preceding session and was confident that, by establishing the legal regulations, the Subcommittee would contribute to closing the gap which would enable all States to make space applications part of their development priorities.

4. Referring to the geostationary orbit, he said that his delegation wanted to reiterate its position that, given the unique and special characteristics of the orbit, formulation of a legal framework complementing the existing instruments in the area of space law and reflecting a rational and equitable balance between the interests of developing countries, including equatorial countries, and developed countries was of transcendental importance. In that spirit of cooperation, Indonesia supported the use, as a basis for deliberations, of the unofficial text drafted by several members of the Group of 77 at the Subcommittee's thirtieth session and hoped that members would demonstrate the political will needed to achieve consensus on that subject. In addition, the proposal in working paper A/AC.105/C.2/L.189, submitted by the Russian Federation, was worthy of further consideration and could constitute the basis for further debate; it dealt with the legal regime applicable to aerospace objects and referred to the question of definition or delimitation of outer space, two closely linked and inseparable issues.

5. Mrs. VASISHT (India) said that her delegation welcomed the consensus adoption of General Assembly resolution 47/68. The Principles adopted in that resolution constituted a set of minimum common requirements for bolstering the confidence of the international community with respect to the safety of using nuclear power sources in outer space and represented a recognition of the

(Mrs.Vasisht, India)

dynamism of technological development. India felt that the spirit of cooperation and consensus which had led to approval of the Principles would continue unabated, since the resolution also stipulated that the Principles should remain open to review.

6. Her delegation had noted the reservations of the Mexican delegation with regard to Principle 4. The fact of having shared those same reservations and the resulting deliberations would contribute to the common experience of interpreting those Principles. The Indian delegation's experts were studying not only the Mexican delegation's observations but also those of other representatives who had made statements at the past two meetings, thereby adding to the Subcommittee's knowledge and its experience in dealing with the issue.

7. Mr. ZAWELS (Argentina) said that several important events in the area of space activities had taken place at the United Nations in 1992. International Space Year had been celebrated and, after much work, resolution 47/68 had been adopted on the basis of a proposal negotiated by the Legal Subcommittee.

8. His delegation felt it important to create by stages an international legal order that would regulate space activities, taking into account the interests of all countries and, in particular, those of developing States. The Subcommittee had given proof of its effectiveness in drafting the important legal instruments which could in the future become the binding rules of international law.

9. The consideration of agenda item 3 flowed from Principle 11 of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space. The discussion had testified convincingly to the validity of those Principles, which contributed to the safety of the use of nuclear power sources in outer space.

10. The subject of delimitation of outer space was enriched by the working paper on questions concerning the legal regime for aerospace objects (A/AC.105/C.2/L.189) submitted by the Russian Federation. The first reading of that document was positive, and its focus represented a valid alternative for examination of the question of delimitation of outer space from another perspective.

11. He emphasized the positive and innovative focus of an informal text submitted by several members of the Group of 77 on the question of the geostationary orbit. At the preceding session, positive contributions by a number of delegations, as duly reflected in paragraph 5 of General Assembly resolution 47/67, had added depth to the reading of that document.

12. His delegation was confident that on that basis progress towards a consensus approach would be made which would allow work on the orbit of geostationary satellites to move forward as a complement to the highly positive work of the International Telecommunication Union.

13. When considering the legal aspects related to the application of the principle that the exploration and use of outer space should be carried out for the benefit and in the interests of all States, taking into particular account

(Mr. Zawels, Argentina)

the needs of developing countries, members should recall the constructive debate which had taken place at the preceding session of the Subcommittee and should also bear in mind the contributions by delegations to the relevant working paper (A/AC.105/C.2/L.182). Argentina, as one of the authors of the paper, favoured in-depth examination based on a consensus approach.

14. The need to begin consideration of the question of space debris was evident. His delegation supported the search for consensus in that regard. It hoped that in the near future the question would form an integral part of the Subcommittee's agenda, so that international rules could begin to be established.

QUESTION OF EARLY REVIEW AND POSSIBLE REVISION OF PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE (continued)

15. Mr. YAMAMOTO (Japan) said that, in its statement in the Special Political Committee in 1992, his delegation had expressed its sincere appreciation for the completion of the work of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space. The most striking feature of those Principles was the underlying sense of balance between viability, adaptability and stability which made them more credible as technical standards for treatment of that complex matter.

16. In that connection, Principle 11 and the basic considerations envisaged in the preamble were most important and offered the best possibility for a practical approach. The Subcommittee should continue giving priority to that matter by allocating to it sufficient discussion time. Accordingly, Japan attached importance to the need for maintaining a working group on the subject. As the representative of the United Kingdom had indicated, the Scientific and Technical Subcommittee had started a useful debate, and his delegation was carefully studying the interesting papers submitted by the United Kingdom and the Russian Federation. It was essential first to exhaust the scientific and technical analysis, which would undoubtedly serve as a basis for a proper review and possible revision of the Principles by the Legal Subcommittee. The absence of a truly active discussion at the current session might well be justified and did not negate the value of the review process as such. If in the future a specific and well-reasoned proposal for revision was submitted, his delegation would study it closely and would actively participate in the discussion.

17. Mr. BOYER (France) said that his delegation shared the view of the representative of Japan and found the United Kingdom paper very interesting.

ORGANIZATION OF WORK

18. Mr. ZAWELS (Argentina) proposed that the working group meeting planned for the evening of 26 March should be postponed in order to continue the informal consultations on the geostationary orbit.

19. It was so decided.

The meeting rose at 10.45 a.m.

UNITED
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16 July 1993
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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-second session

SUMMARY RECORD OF THE 565th MEETING

Held at Headquarters, New York,
on Friday, 26 March 1993, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

CONTENTS

General exchange of views (continued)

Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union

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Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.15 a.m.

GENERAL EXCHANGE OF VIEWS (continued)

1. Mr. SANCHEZ GARCIA (Observer for Cuba) said that Cuba had participated for more than 10 years in the work of the Committee on the Peaceful Uses of Outer Space, and in the Legal Subcommittee and the Scientific and Technical Subcommittee, because his Government planned to become a member of the Committee and to take part in efforts to establish mechanisms for international cooperation that would allow rapid and equitable assimilation by poor and developing countries of the benefits and advantages of the exploration and peaceful use of outer space.

2. With regard to the forthcoming consideration and possible revision of the principles relevant to the use of nuclear power sources in outer space, he noted that if that revision was to be beneficial, it would be necessary to apply legal norms to significantly reduce the risks and to ensure to an even greater extent that all countries, particularly developing countries, would be able to use those power sources under safe conditions.

3. With regard to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, Cuba was in favour of the early establishment of a boundary between air and outer space so as to protect State sovereignty, and supported the development of a legal regime that would ensure the rational and equitable use of the geostationary orbit by all States, taking particular account of the needs of developing countries.

4. As a developing country, Cuba hoped that the right of access of all States to the benefits deriving from the exploration and utilization of outer space would be guaranteed, and that the right of countries having little or no space capacity to participate fully in the exploration and utilization of outer space when they had the material conditions to do so would be safeguarded. In that respect, it was important for developing countries to have effective access to the benefits of space technology; otherwise, the growing disparities between rich and poor countries would spread into outer space.

5. Cuba deplored the continuing allocation of enormous financial resources to the military uses of outer space. The resources that were being so senselessly squandered could be used to provide assistance to the developing countries, many of which were plagued by hunger and poverty, or to give effect to the legitimate wish that the exploration and utilization of outer space be carried out for the benefit of all States.

6. He stressed the importance of the recommendations made at the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, particularly those which were designed to promote the economic, social, scientific and technological progress of developing countries. Those recommendations must be implemented as a matter of urgency.

7. The Committee on the Peaceful Uses of Outer Space should consider the question of the transfer of space technology to developing countries and the best ways and means of achieving that transfer, and also the access of developing countries to the information obtained through remote sensing, which

(Mr. Sanchez Garcia, Observer, Cuba)

was stored in data banks, so that they would be able to react appropriately to environmental emergencies and monitor environmental conditions. Cuba reiterated that it was prepared to cooperate with all countries and international organizations in research into the peaceful uses of outer space and to participate in applying the results of those studies.

8. Mr. AYEWAH (Nigeria) said that the Subcommittee had made a significant contribution to the progressive development and codification of applicable space law in the exploration and use of outer space. It had also contributed to the work of the Committee on the Peaceful Uses of Outer Space in meeting the expectations of Member States and in seeking to make outer space the genuine province of all mankind irrespective of the varying levels of technological development.

9. The principles relevant to the use of nuclear power sources in outer space had been adopted in 1992 following 13 years of deliberations and negotiations. In view of the dangers inherent in the use of nuclear power sources in outer space, strict principles needed to be applied to safeguard outer space and the Earth's environment. However, his delegation was concerned that Principle 11 provided for the revision of the whole set of principles two years after their adoption. Although advances in technology might necessitate a constant revision of the set of principles, his delegation felt that there was a need to first establish common ground on how to strengthen the principles rather than wasting energy in negotiating controversial proposals that would undermine the consensus that had been achieved on the set of principles.

10. The report of the Subcommittee on the work of its thirty-first session revealed an emerging willingness on the part of States to elaborate the basic principles that would regulate the exploration and use of outer space. In particular, the Working Group had made progress on matters relating to the definition and delimitation of outer space and the rational and equitable use of the geostationary orbit. Although some differences still remained, his delegation was optimistic that a breakthrough would be achieved during the current session.

11. His delegation had taken note of the working paper submitted by the Russian Federation (A/AC.105/C.2/L.189) and would comment on it later in the course of the discussions. However, it wished to reiterate its firm belief that outer space, including the geostationary orbit, should remain the common heritage of all mankind, to be equitably explored and rationally used for the benefit of all States. Outer space should not, therefore, be subject to national appropriation or any other claim. The International Telecommunication Union should provide additional scientific and technical input into the allocation, management and use of radio frequencies in the orbit.

12. His delegation hoped that the deliberations on agenda item 5 would take into account the views expressed by the developing countries in the working group. Nigeria, like other States, had called on the space Powers and the technologically advanced countries to spread more visibly the benefits of the exploration of outer space, which had yet to be felt globally. Developed countries and developing countries did not have equal access to space science and technology owing to the wide gap between their respective levels of

(Mr. Ayewah, Nigeria)

scientific and technological development and to the developing countries' lack of material resources and industrial base; as a result, the exploration and use of outer space and the benefits derived therefrom were confined to a few countries. In order to eliminate those inequalities, there must be a legal framework which, as part of international law, would enhance international cooperation and ensure equitable access to outer space and its benefits. That did not mean imposing undue obligations on any State but recognizing the existence of two different categories of States that were mutually interdependent. His delegation would give full support to the further elaboration of those aspects as outlined in document A/AC.105/C.2/L.22.

13. Lastly, he expressed concern about the problem of space debris, in view of the proliferation of satellites and other space objects in all orbits; in his delegation's view, that subject should be included as a separate item in the agenda of the Committee on the Peaceful Uses of Outer Space.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION

14. The CHAIRMAN reviewed the work done on the item by the Subcommittee and drew attention to the relevant documentation.

15. Mr. HAMBALI (Indonesia) said that his delegation was encouraged by the spirit of cooperation and the positive atmosphere that had characterized the discussion of agenda item 4 at the latest session of the Working Group. The discussion had been based on the "working non-paper" circulated by several members of the Group of 77 during the thirtieth session of the Subcommittee, and on various other oral proposals. In addition, there was document A/AC.105/C.2/L.147, submitted by Colombia, Ecuador, Indonesia and Kenya, and the "working non-paper" submitted by the Group of 77 during the twenty-eighth session of the Subcommittee.

16. Those documents and discussions reflected the fact that the developing countries, including the equatorial States and other members of the Subcommittee, were seeking a satisfactory formulation that would balance their respective interests. Indonesia therefore supported using the most recent "working non-paper" submitted by the Group of 77 as the basis for further discussion by the Subcommittee, but urged that elements from the two previous documents, A/AC.105/C.2/L.147 and the 1989 "working non-paper", should also be taken into account.

17. The geostationary orbit was an integral part of outer space and a limited natural resource. Currently, the majority of States, in particular the developing countries, did not have equitable access to the geostationary orbit with proper safeguards. It was therefore imperative for the Subcommittee to clarify the legal implications of the utilization of the geostationary orbit and establish a special legal regime in that regard, supplementary to the 1967 Treaty on Principles Governing the Activities of States and the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

18. Mr. REY (Colombia) said that his delegation planned to take an active part in the deliberations of the Working Group on agenda item 4, but that he also wished to make a statement now at the plenary session of the Subcommittee.

19. With regard to the definition and delimitation of outer space, Colombia reiterated its position that it was necessary to delimit with precision the sphere of application of the legal principles elaborated by the Committee on the Peaceful Uses of Outer Space and adopted by the international community, as well as the sphere of application of any principles elaborated in the future, particularly as concerned the lower limit of outer space. It was important to give further consideration to that question in the light of the working paper submitted by the Russian delegation (A/AC.105/C.2/L.189) and also to entertain the possibility of reconsidering other aspects taken into account prior to the submission of that document. There were a number of technical theories on the question that might help to define and delimit outer space, but that could be done effectively only by formulating legal principles.

20. Colombia's position on the geostationary orbit was well known. Progress had been made on the question since 1988, and especially in 1991, as a result of the discussions in the Subcommittee and the Special Political Committee. That had been reflected in General Assembly resolution 47/67 on international cooperation in the peaceful uses of outer space, particularly in paragraphs 4 (b) and (c) and 5. The question of the geostationary orbit probably received the most attention during the discussions prior to the adoption of that resolution, in which Colombia had participated.

21. He emphasized the need to create a new climate for the consideration of the item and invited delegations to get down to work seriously, in keeping with their obligations to the international community, international space law and their mandate from the General Assembly.

22. Mr. GONZALEZ (Chile) said that when considering the item in question, the Subcommittee had two mandates that could not be sidestepped. One mandate was from the Committee on the Peaceful Uses of Outer Space, which said in paragraph 118 of its report that it had agreed that the approach suggested in the working paper submitted by the Russian Federation (A/AC.105/C.2/L.189) was positive and could form a suitable basis, among others, for future discussions. In other words, unless other alternatives were proposed, the Subcommittee should concentrate on considering that working paper, which would indeed be the most constructive approach. The other mandate stemmed from paragraph 119 of the report, where it was stated that the "working non-paper" on the geostationary orbit could provide a valuable basis for further discussions, and that mandate must be interpreted in conjunction with the stipulations in General Assembly resolution 47/67, paragraph 5.

23. It was clear from the foregoing that, as of the previous year, the question had begun to be considered in a qualitatively different way and that there was currently a clear mandate for negotiations on issues on which there had been a virtual impasse. Since it was the General Assembly that had indicated the basis on which the item was to be considered, any further delay in dealing with it was unacceptable. Accordingly, the Working Group must have the full support of delegations so as not to shirk a legal and political mandate given to it by the highest level body in the United Nations.

24. Mr. ORRICO (Mexico) said that he supported the statements of the representatives of Colombia and Chile.

The meeting rose at 11.10 a.m.

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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-second session

SUMMARY RECORD OF THE 566th MEETING

Held at Headquarters, New York,
on Monday, 29 March 1993, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

CONTENTS

Attendance of non-member States

General exchange of views (continued)

Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union (continued)

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The meeting was called to order at 10.20 a.m.

ATTENDANCE OF NON-MEMBER STATES

1. The CHAIRMAN, after announcing that Kazakhstan had asked to take part in the Subcommittee's work and recalling that it was for the Committee on the Peaceful Uses of Outer Space to grant observer status, proposed that the Subcommittee should not take a formal decision but that, if there was no objection, the representative of Kazakhstan should attend the Subcommittee's official meetings and submit a request to the Chairman should he desire to make a statement.

It was so decided.

GENERAL EXCHANGE OF VIEWS (continued)

2. Mrs. FLORES (Uruguay) said that although the Committee had established a legal framework within which a broad range of space-related activities had been carried out, there was in fact an increasing tendency for developments in the field to exceed the scope of the existing norms, and the progressive development of international space law was therefore imperative. Her delegation had repeatedly stated that the definition and delimitation of outer space and the character and utilization of the geostationary orbit were questions requiring thorough review so that an agreement might be reached as quickly as possible. The working papers presented were a good starting-point for exchanging of views and thus achieving specific results. That would make it possible to solve long-standing problems and ensure that future activities related to the geostationary orbit would be guided by the principles of equity and rationality. It was essential to establish a specific legal regime governing the use of that natural, limited and heterogeneous resource, which was situated in outer space and formed part of the common heritage of mankind.

3. Her delegation considered, in addition, that it would be necessary to prepare a convention on the question of space debris, a subject which had aroused the interest of various delegations, as indicated in paragraph 19 of the Legal Subcommittee's report on the work of its thirty-first session (A/AC.105/514) and to which the General Assembly had referred in paragraph 23 and the following paragraphs of its resolution 47/67.

4. Referring to the legal aspects of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries, she said that the views expressed and the observations made concerning A/AC.105/C.2/L.182, co-sponsored by Uruguay, had been very constructive and the contributions of the various delegations on the subject would allow considerable progress to be made towards the establishment of principles relating to international cooperation in outer space. Cooperation was an international legal obligation and a pre-requisite for the legality of all outer space activity; in addition, it was a cardinal principle embodied in various legal instruments dealing with outer space, such as the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies and the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial

(Mrs. Flores, Uruguay)

Bodies and in Article 1, paragraph 3, of the Charter of the United Nations, which established it as a fundamental purpose of the Organization. The establishment of specific cooperation mechanisms which would permit the full implementation of that principle, was, therefore, a task which the Subcommittee should take up, particularly as it related to agenda item 5.

5. Mr. GOROVE (Space Law Committee of the International Law Association (ILA)) said that the founding in 1873 of ILA, whose name dated from 1895, stemmed from the conviction of its founders that a code of international law must precede any resort to international arbitration and that the want of such a code hindered the substitution of arbitration for war as a mode of dispute settlement. As a non-governmental international institution having headquarters in London and some 40 national branches around the world, ILA operated through its specialized committees set up in various areas of public and private international law.

6. One of the ILA committees was the Space Law Committee, which had worked on many important issues. For instance, in 1984, it had completed the preparation of a draft Convention on the Settlement of Space Law Disputes. More recently, the Committee had been considering the elaboration of principles and guidelines on the subject of environmental risks arising from space activities. In addition, the Committee was engaged in drafting the final text of an Instrument to Protect the Environment from Damage Caused by Space Activities, which was to be presented at the sixty-sixth ILA Conference, to be held at Buenos Aires in 1994. Within the context of that task, it had the following substantive matters assigned to it for consideration: definitions of contamination, pollution and debris; the scope of application of the instrument, which should be as wide as possible; a general obligation to cooperate, incumbent on States and international organizations engaged in space activities, in order effectively to implement the instrument; more precise obligations, such as obligations to prevent, to inform, to consult and to negotiate in good faith when there were reasons to believe that a certain space activity was likely to be detrimental to the environment; the questions of responsibility and liability; and methods of dispute settlement, including provision for compulsory third-party settlement of disputes should no agreement be reached within a specified time-limit.

7. ILA shared the opinion expressed in resolutions of the United Nations General Assembly and the statements of many representatives that the environmental aspects of space activities, and, in particular space debris, must be discussed by the Committee on the Peaceful Uses of Outer Space. Should the ILA Space Law Committee be called upon, it would be more than happy to assist in any way it could in that field.

8. The members of the ILA Space Law Committee had also participated in other space law activities, for example, the preparation of a draft Convention on Manned Space Flight, which he himself had brought to the Legal Subcommittee's attention in 1991 on behalf of the International Astronautical Federation. As a follow-up, an international colloquium on the draft Convention, attended by leading experts in the field from around the world, had been held in Cologne in 1992. The ILA Space Law Committee stood ready to offer its assistance in that area and others relating to space law whenever the Committee on the Peaceful Uses of Outer Space considered it appropriate.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (continued)

9. Mr. RAO (India), referring to the question of the definition and delimitation of outer space, said that for more than two decades the Legal Subcommittee had witnessed a bipolar debate along cold war lines on the need for and usefulness of defining and delimiting outer space as distinguished from airspace and ways of establishing criteria for that purpose. Faced with a stalemate in the discussion, the delegation of the former Soviet Union had proposed that the Subcommittee should consider studying the use of aerospace systems as a specific practical element of the general subject. During the thirty-first session of the Subcommittee held in Geneva, several useful ideas on that subject had been put forth.

10. Although his delegation was one of those which supported the idea that for both practical and legal reasons it was necessary and useful to distinguish outer space clearly from airspace, because they had different attributes and were governed by different principles, he considered that for the time being, the Subcommittee should continue studying the question of the use of aerospace systems, with a view to avoiding a further stalemate in the discussion. The debate should focus on the relationship between aerospace objects and outer space and, to the extent necessary, draw a distinction between that relationship and the one existing between those objects and airspace. Once there was a clear understanding of the broad framework of the proposal, specific legal issues might be identified for detailed discussion. The basic underpinning was to determine whether an object was identical with the medium of its transit. That fundamental issue would open up several related issues for consideration.

11. With regard to the legal aspects of the geostationary orbit, the Subcommittee had been considering ways and means of achieving the rational and equitable use of the orbit, as evidenced by the working non-paper submitted and revised on the initiative of Colombia and other countries (A/AC.105/514, annex II, para. 24). There was no doubt that the geostationary orbit was part and parcel of outer space, and accordingly, must be regulated by the same legal principles. Thus, the problem of the definition and delimitation of the geostationary orbit did not arise since it was a zone of outer space and was clearly distinguishable from airspace.

12. The question of the rational and equitable use of the geostationary orbit, together with related issues, was handled by the International Telecommunication Union (ITU). Accordingly, the Subcommittee, all of whose members were also members of ITU, should deal with broader issues of policy and law. There was no contradiction between the roles of ITU and the Committee on the Peaceful Uses of Outer Space. Their roles were, rather, complementary and useful within the overall context of the peaceful uses of outer space and the interests of mankind in general. Account must be taken of the special needs of the developing countries in considering the utilization of outer space in general and of the geostationary orbit in particular. Further, there must be an equitable relationship between the needs of various countries and their ability to use the geostationary orbit, taking due account of their capacities in that regard. The Nairobi framework on the management and use of the geostationary orbit

(Mr. Rao, India)

formulated by the International Telecommunication Union (ITU) must be assessed from all those angles.

13. Mr. ORRICO (Mexico) reiterated the importance of the definition and delimitation of airspace and outer space. The working paper submitted by the Russian Federation was encouraging, since it offered a possible means of broaching and resolving the matter in a way that was satisfactory to all. Mexico supported the paper, which could serve as a basis for dealing with international legal problems relating to space flights, which would inevitably result in the establishment of a boundary between the two zones. As part of such an exercise, the technical opinion of the International Civil Aviation Organization (ICAO) should be sought, so that the Subcommittee and the Working Group would have available exact technical criteria to guide their deliberations. There was also a need to study carefully the effects on space law of certain advances in space technology, such as the existence of reusable spacecraft, which, on completion of a mission, returned to Earth as aircraft, and access by such craft to the airspace of other countries.

14. It was necessary to begin the elaboration of a legal regime to regulate the utilization of the geostationary orbit so as to avoid its saturation with space objects and debris. The orbit was a limited natural resource that must be used equitably and efficiently on behalf of mankind as a whole, free of any questions of sovereignty. Mexico firmly supported the working non-paper submitted by Colombia on the management of the geostationary orbit; it could serve as a significant basis for negotiation.

15. His delegation drew attention once again to the serious threat posed by space debris for current and future activities in space and called for consideration of an international agreement on the matter. In that connection, it would be necessary to resolve a series of outstanding legal issues and, among other things, define and determine who had jurisdiction over space debris and who was responsible for damage caused by it. The Committee and its two Subcommittees should thus begin, as early as possible, to review all the outstanding technical, legal and political issues relating to space debris.

16. Mr. SCHROGL (Germany) expressed his delegation's complete satisfaction with the work of ITU aimed at ensuring equitable access for all States to the geostationary orbit. Germany supported the drawing up of "a priori" plans for certain telecommunications services that would guarantee into the next century equitable access to the geostationary orbit for every country, regardless of its current ability or intention to use the orbit.

17. At the ITU Additional Plenipotentiary Conference in December 1992, the member States of ITU had agreed on a structural reform of the organization to make it work even more efficiently. With the replacement of World Administrative Radio Conferences by Telecommunications Conferences and the creation of a radio communications as well as a development sector, the promotion of the developing countries' interests had been enormously enhanced. The most appropriate course would thus be for ITU to review the question of access to the geostationary orbit.

(Mr. Schrogl, Germany)

18. The question then arose of what kind of complementary work the Legal Subcommittee could engage in without interfering with the accomplishments of ITU. It might be appropriate for the Subcommittee to consider certain aspects which required in-depth review, such as the question of space debris in the geostationary orbit. It was essential to give the item the importance it deserved and for the Subcommittee to concentrate on areas where the role of ITU would not be prejudiced.

19. Efforts to define or delimit outer space at a specific point, whether 100 or 36,000 kilometres, had proved to be neither necessary nor of benefit for the exploration and use of outer space. It was debatable whether such a limitation was really needed, particularly given the progress which had been achieved. A premature delimitation of airspace and outer space which was not based on solid criteria might even impede the further development of space technology and contradict the principle of the rational use not only of the geostationary orbit but of outer space in general.

20. With regard to the right of passage by aerospace objects through the airspace of States, referred to in the working paper by the Russian Federation, his delegation understood that aerospace objects, such as Buran, needed approximately 7,000 kilometres below the altitude of 100 to 110 kilometres for re-entry. He thus wished the Russian Federation to provide the exact descent trajectories of Buran, so that the question of the right of passage could be discussed on the basis of specific scientific data and those States which would be overflown could study the problem from a practical viewpoint.

21. According to the Russian working paper, there was an international practice whereby a space object launched by a State might, when being placed in orbit, pass without hindrance over the territory of other States at virtually any altitude. His delegation acknowledged such a practice for the passage of space objects at altitudes above 100 to 110 kilometres for space flight under normal conditions, but not below 100 to 110 kilometres. As was well established, satellites could not describe a full orbit below that altitude. His delegation would like to hear of any precedents in that regard. One way of clarifying such issues would be for the Subcommittee to agree upon a series of questions, which could then be put to Member States by the Secretary-General.

The meeting rose at 11.10 a.m.

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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirty-second session

SUMMARY RECORD OF THE 567th MEETING

Held at Headquarters, New York,
on Tuesday, 30 March 1993, at 10 a.m.

Chairman: Mr. MIKULKA (Czech Republic)

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Participation by non-member States

Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union (continued)

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The meeting was called to order at 10.55 a.m.

PARTICIPATION BY NON-MEMBER STATES

1. The CHAIRMAN said that Bolivia had asked to participate in the work of the Subcommittee, and recalled that the Committee on the Peaceful Uses of Outer Space had the prerogative of granting observer status, given which he suggested that the Subcommittee should not take any formal decision on the matter but that, if there was no objection, the representatives of Bolivia might attend formal meetings of the Subcommittee and might direct to the Chair a request for the floor if they wished to make a statement.

It was so decided.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (continued)

2. Mr. REY (Colombia) said that his delegation wished to submit formally to the Legal Subcommittee a proposal on the geostationary satellite orbit which reflected views expressed at the current session of the Committee on the Peaceful Uses of Outer Space.

3. In 1988 Colombia had first submitted a new proposal on the geostationary satellite orbit and in 1991 had drafted a non-paper, endorsed by the Group of 77, which had been circulated to members of the Subcommittee and subsequently reflected in its reports. The proposal now being formally introduced derived from that non-paper.

4. The text of the proposal comprised two parts. The first part was a preamble in which, inter alia, the geostationary satellite orbit was acknowledged to be a limited natural resource which, accordingly, must be used rationally and equitably for the benefit of mankind as a whole, taking into account the special needs of the developing countries, in accordance with the provisions of the relevant international treaties on telecommunications. It should be noted, in particular, that the concept of equity was not arbitrary, but derived from a series of international instruments expounding that concept rather than that of equality. That meant that the preamble did not incorporate new terms, but recognized norms of positive law. Further, the physical nature of the geostationary orbit was agreed, in that it formed part of outer space and was thus governed by the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. Nevertheless, since the physical characteristics of the orbit determined its specific qualities, it was appropriate to apply to it an ad hoc legal regime with the aim of ensuring equity, which was currently lacking, through specific preferential rights. The proposal did not suggest an ad hoc legal regime for the geostationary orbit as a whole, but sought to resolve a specific problem concerning access to the same position or to neighbouring positions within the orbit.

(Mr. Rey, Colombia)

5. The second part of the proposal set forth a series of measures to attain that objective. Criteria were established to determine who would enjoy a preferential right to have access to an orbital position, and the reserving of orbital positions and frequencies was recommended to meet the needs of the developing countries.

6. It should be noted that all the recommendations in his delegation's proposal would apply only if there were no existing regimes established by ITU, in other words, they applied to the orbital frequency bands not covered by the relevant international agreements.

7. Lastly, he trusted that the members of the Subcommittee would carefully analyse the proposal in the hope of resolving the impasse in the work of the Working Group on the geostationary orbit.

8. Mr. ZAWELS (Argentina) said that the Subcommittee should continue its productive work on the progressive formulation of an international legal regime that would take account of the interests of the developed and developing countries.

9. Given its nature and consequences for the modern world, the question of the delimitation of outer space could not be further postponed. It should be recalled that the law governing airspace, with its inherent characteristics concerning sovereignty, territorial integrity and the security of States, was very different to that relating to outer space. In that connection his delegation particularly appreciated the working paper on the legal regime for aerospace objects submitted by the Russian Federation at the Subcommittee's thirty-first session (A/AC.105/C.2/L.189), which had led to a proposal by various delegations regarding a questionnaire to be sent to Member States.

10. Further, the non-paper that some members of the Group of 77 had submitted in 1992 on the geostationary satellite orbit had inspired a constructive debate, which had been reflected in paragraph 5 of General Assembly resolution 47/67. In his view the non-paper would facilitate a consensus on tackling, as a complement to the work of the International Telecommunication Union, the question of the geostationary satellite orbit.

11. Without prejudice to the future inclusion of a new item in the Committee's agenda, his delegation reiterated its interest in making a start on the analysis of questions relating to space debris in the geostationary orbit, since equitable future access to the orbit would largely depend on the measures taken thenceforth to prevent the proliferation of space debris.

12. Mr. GONZALEZ (Chile) said that there had been a substantial legal and political shift concerning the matters covered by item 4 of the Subcommittee's agenda, as indicated by General Assembly resolution 47/67. The change was also reflected in the non-paper by the Chairman of the Working Group containing the draft questionnaire on aerospace objects, the aim of which, in his view, was to complement the working paper submitted by the Russian Federation at the previous session (A/AC.105/C.2/L.189).

(Mr. Gonzalez, Chile)

13. The document submitted by the Chairman of the Working Group, along with the Mexican proposals, would help to establish a framework which would definitively resolve the question of the definition and delimitation of outer space and the character and utilization of the geostationary orbit, progress on which had so often been stalled owing to a lack of political will on the part of delegations. Many of them had now assisted in structuring the draft questionnaire, in what was an important change in position, which his delegation welcomed.

14. His delegation also welcomed the sound proposal by Colombia to transform the non-paper on the geostationary orbit into a working paper, and trusted that it would be supported.

The meeting rose at 11.30 a.m.